

E-002/GR-92-1185 ORDER SUSTAINING ADMINISTRATIVE LAW JUDGE'S
ORDER GRANTING MINNEGASCO LIMITED INTERVENTION IN RATE CASE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner

In the Matter of Northern States
Power Company for Authority to
Increase Its Rates for Electric
Service in the State of
Minnesota

ISSUE DATE: April 5, 1993

DOCKET NO. E-002/GR-92-1185

ORDER SUSTAINING ADMINISTRATIVE
LAW JUDGE'S ORDER GRANTING
MINNEGASCO LIMITED INTERVENTION
IN RATE CASE

PROCEDURAL HISTORY

On November 2, 1992, Northern States Power Company (NSP) filed a petition seeking a general rate increase for electric service in the state of Minnesota.

On December 14, 1992, the Commission issued its NOTICE AND ORDER FOR HEARING in the NSP electric rate case docket. In that Order the Commission determined that the matter must be sent to the Office of Administrative Hearings for a contested case proceeding. The Commission also determined that the parties should address certain specified issues, including the following:

What are the appropriate rates for standing by with capacity and how do general service and standby service demand charges relate to one another during customer system outages?

On January 21, 1993, Minnegasco, a division of Arkla, Inc. (Minnegasco) filed a Petition to Intervene and Notice of Appearance in NSP's general rate case.

On February 1, 1993, NSP filed its Answer and Motion to Deny Petition to Intervene.

On February 2, 1993, oral argument on the Petition and the Motion was heard by Administrative Law Judge Allan W. Klein. Minnegasco and NSP participated in the oral argument.

On February 17, 1993, Minnegasco and NSP filed Supplementary Memoranda.

On February 19, 1993, the ALJ submitted his Order Granting Limited Intervention and Certifying Motion to Commission. In that Order the ALJ stated that Minnegasco was a proper party to intervene in NSP's general rate case, and limited Minnegasco's intervention to standby charges and related issues.

The ALJ's certified Order came before the Commission for consideration on March 18, 1993.

FINDINGS AND CONCLUSIONS

I. Background of the Arkla, Inc. Complaint

Many of the arguments asserted by Minnegasco and NSP relate to issues raised in another proceeding, the complaint filed by Arkla, Inc. (Arkla) against NSP on March 24, 1992, in Docket No. E-002/C-92-228.¹ That complaint arose from a bid by Arkla, Minnegasco's parent company, to construct and maintain a gas-fired steam plant for the University of Minnesota (the U of M). The bid included an option for the facility to cogenerate electric power for use on the U of M campuses.

Operators of cogeneration facilities must assure that a backup supply of electricity is available for customer use when their facilities are closed for maintenance or subject to unexpected outages. Because the U of M is part of NSP's electric service territory, Arkla and NSP entered into talks regarding standby service. When the talks broke down, Arkla filed its complaint.

The U of M cogeneration contract was eventually awarded to a party other than Arkla; Arkla then asked the Commission for permission to withdraw its complaint without prejudice. On May 11, 1992, the Commission issued its ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE AND CLOSING DOCKET. In that Order the Commission stated that it would allow the withdrawal of the complaint, although the issues raised must eventually be addressed:

The Commission notes, however, that underlying issues regarding NSP's Standby Service charges have been raised by the parties and are as yet unresolved. These issues include the utility's proper charge to customers for standing by with capacity, and the proper relationship between General Service and Standby Service demand charges during customers' system outages.

¹ In the Matter of the Complaint by Arkla, Inc. and Minneapolis Energy Center, Inc. Against Northern States Power Company.

The Commission feels that these issues must be resolved to ensure that NSP is offering just and reasonable Standby Service rates. The Commission will therefore direct that Standby Service rate issues be explored and developed in NSP's next general rate case, which NSP has indicated will be filed in November 1992. The Commission finds that the rate case setting is the proper means of providing a full analysis of Standby Service issues. In the general rate case, the Standby Service Rider can be viewed in the context of the Company's rate design, tariffs and riders. The Commission will best be able to balance the interests of ratepayers, stockholders and qualifying facilities in the rate case setting.

Order at pp. 2-3.

II. The ALJ's Order

In his February 19, 1993 Order Granting Limited Intervention and Certifying Motion to Commission, the ALJ made two main findings: Minnegasco is a proper party to intervene in NSP's rate case; and Minnegasco's intervention must be limited to standby service rates and related issues.

In his analysis of Minnegasco as a potential intervenor, the ALJ cited Minn. Rules, part 1400.6200, subpart 1, which provides that persons seeking to intervene in a contested case must show:

- a. how the Petitioner's legal rights, duties, or privileges may be determined or affected by the contested case;
- b. how the Petitioner may be directly affected by the outcome; or
- c. that Petitioner's participation is authorized by statute, rule or court decision.

The ALJ found that Minnegasco, as an owner and operator of natural gas cogeneration facilities, must contract with electric utilities for standby electric service. Any cogenerator on NSP's system must receive NSP's written permission before startup of an independent power service. The ALJ concluded that the electric rates charged by NSP, and services required from NSP, impact the economic viability of certain Minnegasco cogeneration projects. Minnegasco was thus a proper intervenor under the rule.

The ALJ also found that the issues raised in the Arkla complaint proceeding would not be fully explored without Minnegasco's presence as an intervenor. No other party to the NSP rate case could be expected to provide the same perspective as Minnegasco. The ALJ concluded that Minnegasco should be included as an

intervenor.

When discussing the limits on Minnegasco's intervention, the ALJ cited Minn. Rules, part 1400.6200, subpart 1, which states that "[a]n order allowing intervention shall specify the extent of participation permitted the intervenor and shall state the judge's reasons." The ALJ pointed to the Commission's May 11, 1992 Order in the Arkla complaint proceeding as reason for limiting the scope of Minnegasco's intervention to issues surrounding standby service. The ALJ also agreed with NSP's argument that there are other forums to deal with such topics as competitive service riders, cogeneration avoided cost buyback rates, and/or cogeneration interconnection issues. To include such issues in this rate case would unduly broaden it.

The ALJ therefore granted Minnegasco's petition to intervene, but limited Minnegasco to the following specific issues:

- a. NSP's standby service charges, including NSP's proper charge to customers for standing by with capacity, and the proper relationship between general service and standby service demand charges during customers' service outages;
- b. Other issues reasonably related to standby service rates as applied to cogenerators.

The ALJ granted NSP's alternative motion to limit Minnegasco's intervention insofar as it requested the exclusion of certain issues from the scope of Minnegasco's participation. The excluded issues were:

- a. Cogeneration interconnection practices, except as they are necessary to resolve the limited issues enumerated above;
- b. The competitive service rider; and
- c. Cogeneration buyback rates.

III. Positions of the Parties

Minnegasco

Minnegasco urged the Commission to sustain the ALJ's finding that Minnegasco is properly a party, and to widen the scope of intervention recommended by the ALJ. According to Minnegasco, its interests should extend beyond cogeneration, into any use of gas to serve its customers' needs.

Minnegasco argued further that it has a right to intervene because it will be directly affected by the outcome of NSP's rate case. Minnegasco asserted that its position as NSP's competitor

does not preclude it from intervening in NSP's rate case.

Finally, Minnegasco stated that its participation in NSP's rate case will help develop a complete record. This will assist the Commission in its capacity as a decision maker, and help the Commission to fulfill its statutory duty to encourage cogeneration.

NSP

NSP argued that Minnegasco has failed to meet the requirements of Minnesota rules governing intervenors and should therefore be excluded from the rate case. NSP also stated that Minnegasco's position as its competitor should preclude Minnegasco from intervening; allowing Minnegasco unlimited participation in the rate case would give it an unfair competitive advantage.

NSP argued that there are other appropriate forums for the resolution of issues Minnegasco wishes to explore in NSP's rate case. The proper topics of NSP's rate case, or any other rate case, should be the Company's costs, proper rates, and appropriate cost allocation.

At the March 18, 1993 meeting, NSP no longer opposed Minnegasco's intervention, as long as it was limited to issues surrounding standby charges. NSP specifically opposed broadening the scope of intervention to such matters as NSP's competitive service rider, or dispersed generation. According to NSP, these topics are appropriately explored in the resource planning process, not in a general rate case. Widening the scope of intervention could also greatly increase costs for legitimate intervenors.

IV. Commission Analysis

The Commission agrees with the ALJ that Minnegasco is a proper intervenor in NSP's general rate case. Minn. Rules, part 7830.0600 states that a person shall become an intervenor if

...by the outcome of the proceeding he will be bound and affected either favorably or adversely with respect to an asserted interest peculiar to the person as distinguished from an interest common to the public or other taxpayers in general.

As owner and operator of gas-fired cogeneration facilities, Minnegasco will be directly impacted by NSP's standby service rates. The Commission agrees with the ALJ that no other participant in the proceeding can provide Minnegasco's perspective on these issues. Minnegasco thus fulfills the requirements for intervention under Minn. Rules, part 7830.0600.

The Commission also notes that in its Order dismissing the Arkla complaint, the Commission specifically directed NSP to address standby service issues in this general rate case. The NOTICE AND ORDER FOR HEARING in NSP's rate case also directed parties to

address these issues. Standby service issues will therefore

definitely be explored in the NSP rate case; Minnegasco is a proper party to help develop and clarify these issues in the rate proceeding.

The Commission also agrees with the ALJ that Minnegasco's intervention should be limited to issues surrounding standby service rates. There are more appropriate forums for the development of most other issues. As an example, a resource planning docket, rather than the NSP rate case, is the proper forum to develop policy on issues such as dispersed generation. Issues surrounding competitive service are decided on a case by case basis in individual competitive service dockets; Minnegasco has in the past, and can in the future, intervene in these dockets. The Commission also believes that costs for other intervenors may be unduly increased if the scope of Minnegasco's rate case intervention is broadened to develop a multitude of issues from Minnegasco's perspective.

For these reasons, the Commission will limit the scope of Minnegasco's rate case intervention to the matters outlined by the ALJ:

1. NSP's standby service charges, including NSP's proper charge to customers for standing by with capacity, and the proper relationship between general service and standby service demand charges during customers' system outages; and
2. Other issues reasonably related to standby service rates as applied to cogenerators.

The Commission considers that the scope of Minnegasco's intervention would include such issues as supplementary service, emergency service, incidental service, or the demand charge ratchet, insofar as they are reasonably related to standby service rates, as applied to cogenerators.

ORDER

1. The ALJ's February 19, 1993 Order Granting Limited Intervention and Certifying Motion to Commission is sustained.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)